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BY MESSENGER

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ex Parte Presentation

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**Re: MM Docket No. 93-25, Implementation of Section 25 of
the Cable Television Consumer Protection and
Competition Act of 1992**

Dear Ms. Chiara and Messrs. Fitzgerald and Carter:

This letter follows up on the discussion we had with you on September 2, 1997, about the views of the Association of America's Public Television Stations and the Public Broadcasting Service regarding implementation of Section 25(b) of the 1992 Cable Act, which provides for the set-aside of direct broadcast satellite ("DBS") capacity for use by noncommercial entities. You asked that APTS and PBS provide a further submission regarding several topics addressed in our earlier comments filed in the above-captioned proceeding. This letter and enclosures provide additional information on these matters.

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In the discussion below we address the following three issues about which you requested further information: (1) categories of costs to be used in computing maximum rates charged to national educational programming suppliers for use of the DBS set-aside capacity; (2) programming that public television hopes to be able to supply in connection with use of the set-aside capacity; and (3) possible regulations governing joint ventures that seek to be eligible to use the set-aside capacity.

1. Cost Categories To Be Used in Computation of Maximum Rates Charged to National Educational Programming Suppliers

As described in our opening comments, Section 25(b) of the 1992 Cable Act and its legislative history set limits on rates DBS providers may charge for use of the set-aside capacity. Under Section 25(b)(4)(B), the "reasonable prices" that may be charged to noncommercial entities may not exceed 50 percent of the "total direct costs" of making the capacity available. The statute explicitly states that, in computing "total direct costs," certain cost categories must be excluded. "Marketing costs, general administrative costs, and similar overhead costs" of the DBS provider are to be excluded from the rate calculation, as well as any revenue that might have been earned by making the capacity available to a commercial entity. 1992 Cable Act § 25(b)(4)(C).

The legislative history further explains that direct costs include "only the costs of transmitting the signal to the uplink facility and the direct costs of uplinking the signal to the satellite." H.R. Rep. No. 102-628, 102d Cong., 2d Sess. 125 (1992) (emphasis added).¹ Thus, the real question is which categories of costs are encompassed within the "costs of transmitting the signal to the uplink facility" and "the direct costs of uplinking the signal to the satellite." Some commenters have urged that the Commission define eligible costs to include an allocation of the enormous fixed costs DBS providers incur, including the costs of constructing, launching, insuring, and maintaining satellites and engaging in research and development.² However, no commenter pointed to any support in the statute or

¹ Because the term "direct costs" does not appear to have a standard meaning, it is necessary to look to the legislative history for indications of how Congress intended to use the term in this particular context.

² For example, EchoStar argues that national educational programming suppliers should be required to pay, among other things, a portion of the DBS provider's "auction or private acquisition costs, costs of satellite construction, launch, insurance and operation, costs of the uplink facility, including network management costs, costs of digitization, compression and conditional access, and

legislative history for the proposition that the rate for use of the set-aside capacity should permit recovery of all fixed costs incurred by the DBS provider. On the contrary, as explained in our opening comments, the reference in the House Report to costs of transmitting and uplinking the signal on its face describes only those additional costs a DBS provider incurs to carry the programming of national educational programming suppliers. These are the incremental, or marginal, costs of transmitting the signal of the noncommercial entities. Fixed costs, such as the cost of launching a satellite, are incurred whether or not a national educational programming supplier uses the capacity. They cannot be characterized as part of the cost of transmitting or uplinking the noncommercial entity's signal.

The enclosed declaration of Carmel Ortiz, Senior Partner with Skjei Telecom, Inc.,³ lists the categories of DBS costs that can be regarded as incremental costs related to transmission and uplinking of a noncommercial signal. These categories are limited to the following:

- Incremental labor required for traffic management at the uplink facility
- Incremental compression equipment
- Incremental labor required to authorize viewers to receive particular programming
- Any backhaul costs actually incurred by the DBS provider.⁴

[tracking, telemetry and control] expenses." Comments of EchoStar Communications Corporation, p. 7. SBCA takes the position that the rate base for the set-aside capacity should include "all platform provider capital costs," as well as research and development costs. Further Comments of the Satellite Broadcasting and Communications Association of America, p. 15.

³ Ms. Ortiz is the technical consultant to PBS and APTS who assisted with the comments we filed in this proceeding earlier this year.

⁴ As Ms. Ortiz points out, the costs of transmitting a signal to the uplink facility (generally referred to as backhaul costs) in most cases are borne directly by the programming supplier, not by the DBS provider. Thus, while they would not ordinarily form part of the basis for the rate charged by the DBS provider, they are a very real part of the financial burden a national educational programming supplier incurs in making use of the set-aside capacity. Ortiz Dec., p. 3.

Ms. Ortiz explains that the other categories of costs that some commenters wish to add to the rate base do not represent costs of transmitting or uplinking a noncommercial entity's signal. Rather, they entail a recovery of fixed costs, such as the costs of acquiring and launching the satellite. These categories of costs are ordinarily recovered through assessment of channel lease fees. The cost categories covered by these fees do not represent costs that the DBS provider incurs as a result of the noncommercial entity's use of the set-aside capacity. Ortiz Dec., p. 2.

It is clear that including costs that represent an allocation of the DBS provider's fixed costs as part of "direct costs" for purposes of the set-aside capacity would conflict with the underlying legislative intent. Congress's evident purpose in limiting the costs that could be used in setting rates for use of the set-aside capacity was to ensure that the capacity would be affordable for entities with limited financial resources. The statute itself provides, in Section 25(b)(4)(A), that in determining appropriate rates the Commission must consider the nonprofit character of the programmer to whom the capacity is provided. This statement is a strong indication that Congress wanted the Commission to take into account the limited financial resources of national educational programming suppliers in issuing rules governing rates for the set-aside capacity. The Conference Report further explains that the "pricing structure was devised to enable national educational programming suppliers to utilize th[e] reserved channel capacity." H.R. Rep. No. 102-862, 102d Cong., 2d Sess. 100 (1992).

These statements in the statute and legislative history strongly suggest that the definition of "direct costs" on which rates for the set-aside capacity are to be based is a narrow one. If inclusion of certain cost categories in the rate base would cause the set-aside capacity to be unduly expensive, thereby deterring or, as a practical matter, preventing, noncommercial entities from use of the capacity, one must conclude that Congress did not intend to include those categories within "total direct costs," as that term is used in Section 25(b).

The declaration of Carmel Ortiz shows that, even when a 50 percent factor is applied, requiring noncommercial programming suppliers to contribute to the large fixed costs of DBS providers would add very substantially to the financial burden of using the set-aside capacity, putting use of the capacity out of reach for most eligible entities. If only the costs of transmitting and uplinking the noncommercial signal, *i.e.*, the incremental costs of carrying the signal, were considered, the rate charged to a national educational programming supplier for a single channel of programming would likely be in the range of \$2,000 to \$3,000 per

month, in addition to payment of substantial backhaul costs (in the range of \$20,000 per month). Such amounts in themselves may be higher than some nonprofit entities can afford. If the rate base were expanded to include the costs of acquiring, launching, insuring, and operating the satellite and conducting research and development activities, as some commenters have urged, a national educational programming supplier that used DBS capacity pursuant to the set-aside requirement could be required to pay rates in the range of \$19,000 to \$29,000 per month for a single channel of programming. See Ortiz Dec., pp. 2-3. At this rate level, and taking into account the significant backhaul costs they must pay (see Ortiz Dec., p. 3), many national educational programming suppliers clearly could not afford to provide programming for the set-aside capacity, which in turn would defeat the whole point of the set-aside requirement.

In view of Congress's concern with ensuring that use of the set-aside capacity would be affordable for non-profit entities, the Commission should not interpret the term "total direct costs" to include cost elements that represent an allocation of the DBS provider's fixed costs. The substantial increase in financial burden that would result from inclusion of these costs in and of itself shows that adding an allocation of fixed costs to the rate base for noncommercial users would thwart Congress's intent. The Commission should make clear in its regulations, consistent with the statement in the House report, that "total direct costs" are confined to the incremental costs of transmitting and uplinking a noncommercial signal and are not to include any recovery of fixed costs.

2. Programming Public Television Hopes to Supply in Connection with Use of the Set-Aside Capacity

You have expressed interest in the volume of programming public television expects to supply for purposes of the set-aside capacity. We understand that this could be a consideration in the Commission's decision whether to establish the set-aside requirement at seven percent of DBS capacity or some smaller percentage.

We believe that public television and the other entities eligible to use the set-aside capacity will have ample programming available to justify a set-aside of seven percent of DBS capacity. The comments filed with the Commission show that a number of noncommercial programming suppliers have a strong interest in providing programming. Over the years PBS and individual public television stations have built up an extensive inventory of program resources that would be suitable for DBS audiences. PBS alone has a large library of programming that it

hopes to be able to place on the set-aside capacity. Examples include the programming materials developed for the following services:

- PBS's Adult Learning Satellite Service, in partnership with public television stations and colleges and universities across the country, provides over 70 college-credit television courses to more than 400,000 students each academic year. Individual stations also serve their communities and state colleges and universities by delivery of local college-credit classes. For example, three stations combined, KAMU/College Station, KUED/Salt Lake City and KWSU/Pullman, provide 670 non-PBS accredited telecourses reaching thousands of additional adult learners. Through PBS's "The Business Channel" and individual station initiatives, public television is delivering a broad array of professional development courses and teleconferences to organizations nationwide. PBS is also launching the "Ready to Earn" project, designed to train adults with specific job skills for entry into the work force. Going the Distance, the first Ready to Earn service, allows students to earn an Associate of Arts degree from their local college through distance learning. In addition, through a public/private partnership, public television is piloting a new initiative called Literacy Link, which will use video, online and computer technology to help adults receive literacy instruction and gain high school equivalency diplomas. The digital capability provided by DBS is particularly well suited to this new initiative.
- PBS's Teacher Resource Service for K-12 education has made it a leader in using technology to train teachers. Through the National Teacher Training Institute for Math, Science and Technology, public television stations at 26 sites across the country have trained 116,000 teachers to use television and new technologies, such as CD-ROMs and online services, to enhance math and science classroom lessons. Through the award-winning PBS MATHLINE, public television has, in only three years, provided more than 4,000 K-8 math teachers in 36 states with in-depth training in math, reaching close to 800,000 students. The digital technology offered by DBS will allow public television to expand significantly the reach of these initiatives by allowing for the integration of online services with broadcast video and data services.
- Children's television services could include expansion of the "Ready to Learn" service, a comprehensive programming and outreach service designed to assure school readiness and success for children, particularly those ages 2 to 6. Each weekday, local public television stations that participate in Ready to Learn broadcast at least six and one-half hours of contiguous programming from the PBS

children's series, along with specially produced program breaks containing educational messages. Participating stations work with local community organizations, social services agencies, and daycare centers to train parents, educators, and childcare providers how to use public television to build an educational environment in the home. Currently, 120 participating stations cover 88 percent of the country. Over the past three years, public television stations have trained 44,000 parents and almost 74,000 teachers and caregivers, affecting over 50 million children. The large channel capacity of DBS, as well as its full CONUS coverage, will greatly enhance the effectiveness of this service. Although many public television stations can offer the basic video portion of this service, some stations are unable to offer the full complement of Ready to Learn programs due to limited channel capacity and the commitment to meet other educational needs of their viewers. Use of multiple DBS channels would make it possible to carry the full complement of programming.⁵

In order to provide you with some idea of the scope and volume of programming that PBS is interested in presenting to DBS audiences, copies of materials describing resources available from PBS in connection with the Adult Learning Satellite Service and the Teacher Resource Service are enclosed with this letter. PBS expects to use portions of the program material from these and other PBS services in connection with the DBS set-aside capacity. A copy of the current PBS Video Catalog of Educational Resources, which lists hundreds of educational video programs available through PBS, is also enclosed.

In addition to the programs available from PBS, individual public television stations produce programming that they hope to present to DBS audiences. A number of stations have indicated to APTS and PBS that they have a strong interest in the possibilities for DBS distribution of their programming.

Because rights clearances must be obtained in some cases, not all of this programming could be made immediately available for DBS use. However, many public television programs have already been, or will soon be, cleared for DBS. Particularly in the area of instructional programming, PBS has already cleared a very substantial library of programs. In other cases, it will be necessary for PBS or other

⁵ Moreover, the large channel capacity and geographical reach offered by DBS would permit provision of more training to parents and caregivers. Currently training is provided by in-person workshops in communities. By transmitting training programming and materials through a multichannel DBS service, public television could provide training to far more people in an efficient and cost-effective manner.

public television entities to take additional steps to clear the rights for presentation of programs on DBS. However, once the set-aside requirement becomes effective, there will be greater incentives for parties to move ahead to resolve open copyright issues and/or acquire necessary rights. The introduction of a seven percent set-aside requirement would provide a strong impetus for noncommercial programmers and rights holders to move forward quickly with the process of clearing rights for DBS use.

A higher percentage set-aside requirement could also stimulate production of more noncommercial programming.⁶ Once the Commission acts to ensure that seven percent of DBS capacity will be available for use by noncommercial entities, the availability of noncommercial programs suitable for DBS audiences is likely to increase significantly. Within a few years, national educational programming suppliers should have no difficulty filling most or all of a seven-percent capacity set-aside.

In these circumstances, the Commission should not hesitate to prescribe a seven-percent set-aside requirement at this time. In our earlier comments, we explained why developments in the DBS industry support the conclusion that immediate imposition of a seven-percent requirement is most consistent with congressional intent. See APTS/PBS Opening Comments, pp. 36-38. Even if noncommercial entities could not immediately fill the entire capacity, nothing is lost by establishing the requirement at the high end of the range prescribed by Congress. Section 25(b)(2) of the statute makes clear that DBS providers may utilize unused set-aside capacity for their own purposes until national educational programming suppliers are prepared to fill the capacity. Moreover, setting a higher percentage requirement now serves the interests of administrative convenience and efficiency. It makes far more sense to establish a seven-percent set-aside requirement at the outset, rather than establishing a lower requirement initially and then periodically reopening the rulemaking to revise the requirement upward as national educational programming suppliers increase their inventories of programming suitable for DBS use.

⁶ DBS rights for the new programming could be negotiated from the outset.

3. Regulation of Joint Ventures Between Noncommercial Program Suppliers and For-Profit Entities

The comments filed by APTS and PBS earlier this year urged that the Commission not prohibit legitimate arrangements under which for-profit entities (including DBS providers) might enter into joint ventures with bona fide noncommercial program suppliers in connection with use of the set-aside capacity. We noted that such joint ventures could provide a non-profit program supplier with a source of funding to produce additional programming or clear additional program rights for the reserved DBS capacity. We explained that such ventures should be permissible, so long as (1) they include as a participant an entity that is a qualified "national educational programming supplier" as defined in the statute and (2) the "national educational programming supplier" maintains editorial control over the programming offered on the reserved capacity. See APTS/PBS Opening Comments, pp. 17-22.⁷

You have asked for further information on how the Commission might frame regulations that would place appropriate restrictions on joint ventures of the sort we have described. In our view, the Commission should allow for a reasonable amount of flexibility in such arrangements. Parties to these ventures should be able to develop a variety of structures, so long as the selection of programming for the set-aside capacity is vested in the eligible noncommercial entity.

The Commission in the past has not had difficulty determining issues of control in connection with ventures involving for-profit and noncommercial entities. For example, in a recent decision, In re Application of Volunteers in Technical Assistance, 11 F.C.C. Rcd. 1358 (1995) ("VITA"), application for review denied, File No. C55-9100713, Decision released Sept. 11, 1997, involving an application for authority to construct a satellite system, the Commission affirmed the conclusion of the International Bureau that an arrangement under which a commercial entity used half of the satellite capacity held by a noncommercial entity did not result in a de facto change of control. The Commission affirmed the

⁷ As noted above, the noncommercial partner must be a bona fide noncommercial programming supplier. In our view, this criterion would not be satisfied if a DBS provider or other commercial entity created a new non-profit subsidiary as a mechanism for rendering the commercial entity's programming eligible for the set-aside capacity.

International Bureau's application of the Intermountain Microwave criteria⁸ to determine that there had been no de facto shift of control from the noncommercial entity to the commercial entity. The International Bureau's decision noted that the Intermountain Microwave criteria were developed in the context of purely commercial ventures and that entities with noncommercial motives would not necessarily seek the same level of involvement in day-to-day financial or operational activities as a commercial entity. 11 F.C.C. Rcd. at 1367-68 ¶ 29. Among other things, the Chief of the International Bureau noted that the noncommercial entity in the VITA proceeding would unquestionably retain control over the educational programming content of the 50 percent of the satellite capacity dedicated to that entity's non-profit purposes and that retention of control by the noncommercial entity over noncommercial educational programming content had been a significant factor in Commission decisions to foster commercial/noncommercial partnerships. See id.

The process of regulating joint ventures for purposes of the DBS set-aside requirement should be considerably easier than determining control in a licensing or construction authority context. In the context of the DBS set-aside requirement, the Commission need not determine that the noncommercial entity maintains overall control of the joint venture. Section 25(b)(3) of the statute requires only that a DBS provider not exercise any editorial control over video programming provided pursuant to the set-aside requirement. Commercial entities other than DBS providers also should not be permitted to exercise editorial control over programming for the set-aside capacity.⁹ So long as satisfactory safeguards are in place to ensure that the noncommercial entity makes all final decisions about the programming placed on the set-aside capacity, the Commission need not engage in a lengthy analysis of the overall structure of a joint venture.

⁸ See In re Applications of Intermountain Microwave, et al., 24 Rad. Reg. (P&F) 983 (1963). Under Intermountain Microwave, the Commission considers six factors in deciding issues of de facto control of licensees. Relevant factors include whether the licensee has access to all facilities and equipment, who is in charge of daily operations, policy decisions, employment matters, and payments, and who receives profits. Decisions on de facto control are made on a case-by-case basis and depend on the facts and circumstances of an individual case. VITA, II F.C.C. Rcd. at 1365 ¶ 22.

⁹ Section 25(b)(3) identifies only "national educational programming suppliers" as entities eligible to use the set-aside capacity. Thus, only those eligible noncommercial entities may exercise control over selection of the programming for that capacity.

While it might be preferable for the noncommercial partner to have a 50 percent or greater ownership interest in the joint venture in some instances, such a "bright line" test could interfere with legitimate arrangements in which one party provides more than 50 percent of the necessary capital. The Commission should require only that, in order for a joint venture to be eligible to use the set-aside capacity, there must be a written agreement between the parties that states explicitly that the noncommercial entity is to exercise control over programming decisions for the set-aside capacity.¹⁰ For ventures in which the noncommercial partner holds less than 50 percent of the ownership interests, the regulation could also require that the parties establish a special committee or other mechanism that would assure that the eligible entity would maintain sole responsibility for, and control over, programming decisions for the set-aside capacity and that the joint venture agreement contain a specific provision to this effect. The regulation could require that the parties file with the Commission either the written joint venture agreement or a synopsis containing the relevant provisions concerning the program selection process, as well as a statement describing the ownership interests held by each of the parties.

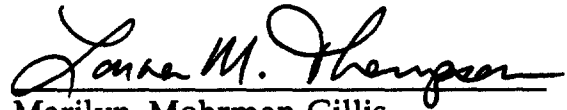
The public would have access to the written materials required to be filed with the Commission, and thus could monitor any joint venture arrangements to be sure that they met the relevant requirements. Any concerns based on inadequacy of a joint venture's filings with the Commission or the actual operation of the joint venture could be brought to the Commission through a complaint process. There would thus be no need for the Commission to scrutinize every joint venture arrangement in advance.

* * * * *

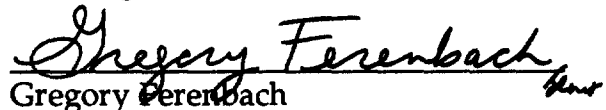
¹⁰ A requirement that the noncommercial partner exercise actual editorial control over the content of particular programs is neither necessary nor appropriate. In PBS's experience, such content decisions are best left to the producer of the program, which is usually a separate production company under contract with PBS.

We hope that this information is helpful to you. If we can be of further assistance, please do not hesitate to contact one or both of us.

Sincerely,



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Enclosures

cc: Office of the Secretary



**DECLARATION
OF
Carmel Ortiz**

My name is Carmel Ortiz and I am a Senior Partner at the consulting firm of Skjei Telecom, Inc. Skjei Telecom is an engineering and marketing consulting firm located in Falls Church, Virginia, specializing in compressed digital video and satellite communications. I have been involved as an engineer and consultant over the past 10 years in the area of satellite communications and compressed digital video systems, including Direct Broadcast Satellite (DBS) systems. My experience is based on consulting assignments and full-time product management and product development positions with two major satellite service providers. I have a degree in Electrical Engineering from The Georgia Institute of Technology.

I understand that the FCC staff has solicited input on categories of costs that should be used in computing maximum rates charged to national educational programming suppliers for use of DBS set-aside capacity. I discuss below various categories of costs associated with DBS operations and whether they may appropriately be included in the rate computation for the set-aside capacity. This statement is based on my professional knowledge and experience.

The prices provided below are current market fees for a single channel of programming under a high-volume contract (5-7 channels transmitted full-time on a five-year service contract). A programming supplier with only one channel would not have the benefit of volume pricing and would pay higher fees. The ranges are not precise but are intended to provide an order of magnitude for the costs.

Cost Categories To Be Included in Rate Computation

I understand that the costs to be included in the rate computation for the set-aside capacity are costs the DBS provider incurs in transmitting the signal from the noncommercial supplier to the uplink facility and uplinking the signal to the satellite. The applicable costs would be the marginal (or incremental) costs to the DBS provider for each additional channel that is carried.

1. Traffic Management - This includes incremental labor required for traffic management at the uplink facility.

Commercial rates for this service range from \$2,500 - \$5,000 per month, depending on the complexity of the operation.

2. Video Compression Equipment - This includes incremental video and audio compression equipment used to process the signal for transmission to the satellite.

The list price for hardware needed for one additional channel is roughly \$50,000.

3. Authorization - This includes the incremental labor required to authorize viewers to receive the programming.

Typical commercial rates for this service are \$1,200 per month.

Each of these fees presumably incorporates some mark-up over cost. For purposes of this statement, I assume that this mark-up is in the range of 15 percent. Based on this assumption, I estimate that a programming supplier that paid a rate consisting of 50 percent of the marginal costs described above would pay in the range of \$ 2,000¹ to \$ 3,000² per month for a full-time channel.

Cost Categories That Should Not Be Included in the Rate Computation

The following fees are associated with cost categories that do not represent marginal costs to the DBS provider but rather represent recovery of the DBS provider's fixed costs, such as costs of construction, launch, insurance, licensing and maintenance (telemetry, tracking, and control) of the satellite, cost of the other common hardware, and research and development costs.

1. Uplinking Equipment - This includes the equipment required to modulate the encoded video signal and transmit it to the satellite. The DBS uplink is typically configured to transmit multiple transponders of video, and does not require incremental hardware to support transmission of additional programming carried on the set aside capacity.

¹ $\$2,500 + (\$50,000 \div 60 \text{ months amortization}) + \$1,200 = \$4,533$; $\$4,533 - 15\% = \$3,853$; $\$3,853 \times 50\% = \$1,926.67 \approx \$2,000$

² $\$5,000 + (\$50,000 \div 60 \text{ months amortization}) + \$1,200 = \$7,033$; $\$7,033 - 15\% = \$5,978$; $\$5,978 \times 50\% = \$2,989.17 \approx \$3,000$

Uplinking equipment costs are typically recovered in channel lease fees.

2. Channel Lease Fees - These fees are imposed in connection with use of the satellite bandwidth. There is no incremental cost here; for example, the costs to launch and maintain the satellite are incurred regardless of the number of channels transmitted.

Typical commercial fees for a channel lease are in the range of \$40,000 - \$60,000 per month. Based on an assumption that these fees reflect a 15% mark-up, a programming supplier that paid a rate consisting of 50 percent of the costs covered by channel lease fees would pay in the range of \$17,000³ - \$26,000⁴ per month for these services.

If both marginal and fixed cost categories are included in the rate calculation, and using the 15% mark-up assumption, a programming supplier paying 50% of direct costs would pay in the range of \$19,000⁵ - \$29,000⁶ per month to transmit one channel of programming using DBS set-aside capacity.

Additional Considerations

When considering the affordability of DBS transmission for noncommercial programming suppliers, backhaul costs must be considered along with rates paid to DBS providers. Backhaul costs are the costs of transmitting the signal from the source to the uplink facility. These costs are typically paid by the content provider itself, not the DBS provider. Thus, although they should not be included in the rate charged by the DBS provider, they still represent a significant financial burden on a programming supplier. (If the DBS provider did provide backhaul services, the cost of these services would appropriately be included in the rate charged to a noncommercial programming supplier.)

Backhaul costs are highly dependent on the facility used (satellite, fiber, etc); they are in the range of \$20,000 per month for a full-time channel.

³ \$40,000 - 15% = \$34,000; \$34,000 x 50% = \$17,000

⁴ \$60,000 - 15% = \$51,000; \$51,000 x 50% = \$25,500 ≈ \$26,000

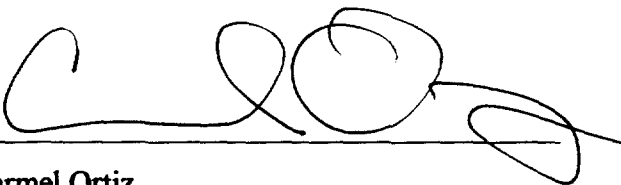
⁵ \$2,000 + \$17,000 = \$19,000

⁶ \$3,000 + \$26,000 = \$29,000

When combined with these backhaul costs, even DBS rates based only on the costs of traffic management, incremental video compression equipment and authorization will be substantial. Because the above prices are based on a multi-channel service contract, a single channel noncommercial supplier should expect to pay rates that are even higher than those shown above. In my opinion, if an allocation of the fixed costs of the DBS provider is added to the rate base, there is a significant danger that many noncommercial programming suppliers would be unable to afford use of the set-aside capacity.

I, Carmel Ortiz, declare under penalty of perjury that the foregoing is a true and correct statement based on my professional experience.

Executed on: 9/22/97

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

Carmel Ortiz
Senior Partner

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

o An oversize page or document (such as a map) which was too large to be scanned into the RIPS system.

o Microfilm, microform, certain photographs or videotape.

✓ Other materials which, for one reason or another, could not be scanned into the RIPS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.

Two catalogs and a pamphlet:

- 1. The Catalog of Educational Resources*
- 2. Fall 1977 Programming Lineup*
- 3. Transforming Teaching Through Technology*